Case Summary

Complaint against the Official Receiver's Office for delay in following up a report of bankruptcy offence

The Complaint

The complainant reported to the Official Receiver's Office ("ORO") that a bankrupt dishonestly borrowed money from him during her bankruptcy. ORO allegedly did not follow up his report in a timely manner.

Sequence of Events

2. The court made a bankruptcy order against Madam A ("the Bankrupt") in March 2000 and appointed the Official Receiver ("OR") as the trustee of her estate ("the trustee") in May.

3. In July 2001, the court issued an order to discharge OR of his duties as the trustee. Subsequently, ORO classified the case of the Bankrupt as "non-active".

4. Between May and June 2002, the Bankrupt borrowed money from the complainant several times and the total loan amounted to tens of thousands of dollars. He later discovered that a bankruptcy order had been made against her.

5. In November 2002, the complainant wrote to ORO to report that the Bankrupt had borrowed money from him without disclosing her status as a bankrupt.

6. From the time of his report to ORO till December 2003, the complainant had taken the initiative to meet the case officer Mr B and telephoned ORO every two months to enquire about progress of the processing of his complaint. However, each time the reply was: "due to manpower shortage and heavy workload, the case was still being processed" or the like.

7. Mr B retired in December 2003.

8. The complainant called ORO again in March 2004 to enquire about progress. Case officer Madam C, who had taken up the duties of Mr B, explained that the case file had been transferred to ORO's file repository and needed to be retrieved before she could understand its status. About a week later, Madam C replied to the complainant that the Bankrupt had just been discharged from bankruptcy, but he could make a fresh bankruptcy petition against the Bankrupt in respect of the alleged debt.

9. In April 2004, the complainant lodged a complaint with this Office against ORO for failing to follow up his report promptly.

Information provided by ORO

10. ORO's internal guidelines provide that a reply, or an interim reply where an investigation is warranted, to incoming mails must be issued within 10 days. Besides, upon receipt of a report, the case officer should conduct an investigation and pass all the information collected to the Prosecutions Section to determine whether or not to institute prosecution.

11. ORO also requires each case officer to complete the investigation of every allegation as soon as possible and pass it to the supervising officer for examination and approval at least at two stages, i.e. when recommending summary administration of the bankrupt's estate, and when applying to the court to discharge OR of his duties as trustee. As the complainant made the report to ORO after OR had been discharged as the trustee of the Bankrupt's estate, the case was classified as "non-active" and there was no need to refer it to the supervising officer for examination.

12. Upon receipt of the complaint referred by this Office, Madam C met with the Bankrupt on 12 May 2004 to discuss the matter. Subsequently, the Prosecutions Section of ORO decided that there was insufficient evidence for prosecution.

13. Save for a copy of the complainant's identity card with his own signature and a date, there was no record whatsoever in the case file that Mr B had conducted an investigation or that he had given any verbal or written reply to the complainant.

Observations and Opinions

Investigation by Mr B

14. Mr B had talked with the complainant and the Bankrupt over the telephone. But he had not passed the case to the Prosecutions Section to consider whether to prosecute, nor prepared handover notes for his successor before he retired. It was therefore not known whether Mr B considered the investigation of the case completed or still outstanding.

15. Mr B did not follow ORO's established guidelines and procedures to issue to the complainant an interim reply within 10 days or record the progress of his investigation. Furthermore, he did not formally notify the complainant of the investigation result. All these constituted gross maladministration. For this, ORO had sent a written apology to the complainant.

16. From our scrutiny of the case file, we considered that Mr B had failed to thoroughly investigate the matter reported or explained to his successor what follow-up action was necessary. That constitutes gross maladministration and dereliction of duty. He had not only done an injustice to the complainant but also brought disgrace to ORO.

Supervision by ORO

17. There were inadequacies in ORO's administrative procedure on the handling and monitoring of offence reports. This case shows how a case officer could decide on his own to conclude a case and, without even consulting the Prosecutions Section or his supervising officer, decide not to institute prosecution. Even when an informant was dissatisfied with the case officer's decision and requested a review of the case, there was no system in place to alert case officer's supervisor and/or other senior staff.

18. ORO had general procedures for handling "complaints" which could include objections to decisions of case officers. Such procedures provided for checking by senior officers of the outcome of the inquiry into the complaints. However, the informant might not know about such procedures. If he merely expressed dissatisfaction over the findings of the investigation without stating clearly that he was lodging a complaint, ORO might not review the case according to its complaint handling procedures.

19. Moreover, ORO did not require its outgoing staff to prepare handover notes on "non-active" cases. That explained why Madam C knew nothing about the case.

Conclusion

20. We considered that ORO had no effective monitoring system for handling reports on bankruptcy offences, especially those in connection with "non-active" cases. It had no clear internal guidelines to ensure that reports were duly followed up and investigated.

21. The weaknesses identified in this case were also reflected in another complaint that we investigated. In that case, an ORO case officer failed repeatedly to respond to the numerous written enquiries from a complainant, without his supervisors being alerted to the situation, thereby highlighting inadequacies in ORO's monitoring mechanism.

22. The Ombudsman considered the complaint **substantiated.**

Recommendations

23. This Office recommended that the Official Receiver:

(a) formulate guidelines on the classification of “non-active” and “no further action” cases;

(b) draw up guidelines on the supervision of processing reports on bankruptcy offences under the Bankruptcy Ordinance; and

(c) remind case officers from time to time to adhere to established guidelines when following up allegations on bankruptcy offences and to keep a record of major details such as conversations and interviews with informants.

Comments from ORO

24. ORO stated that in view of the 77,000 new cases over the past six years, the present monitoring measures had been effective in delivering an efficient insolvency service. ORO believed that the existing monitoring measures are adequate, but it undertook to:

(a) remind staff to reactivate cases where offence reports are received;

(b) require staff to keep a record of, and report to their supervisors, all offence reports received and that “no further action” decisions have to be endorsed by the supervisors; and

(c) issue reminders to case officers every three months on proper handling of cases.

Final Remarks

25. This Office agreed that ORO had provided guidelines for its case officers, but no arrangement to monitor the progress of their work on cases. It was, therefore, essential to put in place the monitoring measures and the conclusion and recommendations of this investigation should stand.

Office of The Ombudsman
January 2005